86-73

Supreme Court, U.S.
FILED
APR 15 1987
JOSEPH F. SPANIOL, JR.
CLERK

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NO:

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

BEULAH W. BOOKER,
PETITIONER

versus

EVELYN MOBLEY, M.D.
RESPONDENT

---

ON PETITION FOR APPEAL TO THE
UNITED STATES SIXTH CIRCUIT

---

# PETITION FOR CERTIORARI

---

BEULAH W. BOOKER
643 MIAMI CHAPEL RD.
DAYTON, OHIO 45408

43pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

## QUESTION PRESENTED

When a trial judge holds a pre-trial conference with the defendant without notifying plaintiff to be represented and change the original complaint of negligence to medical malpractice, does this violates plaintiff Constitutional Rights. Other judgments were affected by the common pleas court judgment.

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## OPINIONS BELOW

The opinion of the United States Sixth Circuit Court of Appeals is reported at Booker v. Mobley, case no. 85-3568 (Ohio 1986). The opinion of the U. S. District Court for the Southern District of Ohio Western Division is reported at Booker v. Mobley, case no. C-3-85-454 (Ohio 1985). Other relevant state court opinions involving the same Respondent can be found at Booker v. Mobley, case no. 9074 (c.p. #83-2237) (Ohio 1984-1985).

## JURISDICTION

The opinion of the United States Court of Appeals was rendered on January 15, 1986. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. 1254 (1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent parts:

> Congress shall make no law abridging the freedom of speech or the right of the people to petition the Government for a redress of grievances.

The Seventh Amendment to the United States Constitution provides:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise re-examined in any court of the United States than

according to the rules of the common law.

The Thirteeneth Amendment to the United States Constitution provides in pertinent part:

> Neither slavery nor involuntary servitude, shall exist within the United States any place subject to their jurisdiction.

The Fourteeneth Amendment of the United States Constitution provides in pertinent part:

> SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

In May-June 1982, Petitioner was injured at her place of employment, Delco Moraine, General Motors Corporation, the the Respondent is it's Plant Medical Director who refused to have Petitioner removed from a job that caused her severe injuries; according to the Contract between U.A.W. & G.M.C. "any employee who has been incipacitated at regular work by injury or compensable

occupational disease while employed by the Corporation will be employed in other work on a job that is operating in the plant which he can do." Petitioner received severe injuries to her hands which resulted in an operation on the right hand and pending surgery for the left hand. During the time Petitioner was being injured, she was also being disciplinary with the balance and up to thirty days off without pay, the next step was to be fired. Respondent had been warned by Petitioner and six other doctors about the severity of her hands in trying to perform the assigned job.

On August 17, 1983, Petitioner filed a negligence complaint in the Montgomery County Common Pleas Court Booker v. Mobley, case no. 83-2237 (Ohio 1983) O.C.R. 2305.10 bodily injury. The complaint was set up for a pre-trial con-

ference on October 14, 1983, and was heard by Judge John Kessler Bailiff on orders from the judge. At this hearing a jury trial date was set for March 12, 1984, which was agreeded upon by the Petitioner and Respondent. On December 9, 1983, a second pre-trial conference was held without notifying Petitioner. At this hearing, the complaint of negligence with a jury trial was changed to medical malpractice with an arbritrator, who was pick from Respondent's attorney building. Judge John Kessler dismissed the case stating Statute of Limitation of one (1) year. Petitioner filed a notice of appeal to the Court of Appeal of Montgomery County, Ohio Booker v. Mobley, case no. 9074, and stated that the statute of limitation had not ran out. The statute of limitation for negligence is two years, also that the Respondent

is not listed with the Dayton Medical Society as a licensing practing physician nor did she diagnosis or treat Petitioner as her patient. Petitioner received a report of her injuries on October 4, 1983, three months after surgery. Petitioner stated that her rights was violated in the lower court when she was not notified of the second pre-trial conference. The appeal court affirmed the lower court dismissal.

Petitioner filed a complaint of discrimination in the United States District Court for the Southern District of Ohio, Western Division, Booker v. Mobley case no. C-3-85-454, stating she was denied and could not enforce her equal civil rights in state courts; citing the Civil Rights Bill of 1964, 42 U.S.C. 1981 & 1983, and 28 U.S.C. 1443 (1). The District Court dismissed the case

sua sponte, for want of subject matter jurisdiction. Petitioner appeal to the United States Court of Appeals for the Sixth Circuit Booker v. Mobley, case no. 85-3568 (Ohio 1985). The Court of Appeals of the Sixth Circuit affirmed the District Court dismissal.

## REASONS WHY THE WRIT SHOULD BE GRANTED

CERTIORARI SHOULD BE GRANTED BECAUSE THE FIFTH CIRCUIT COURT OF APPEALS OF GEORGIA DECIDED THE DEFENDANTS HAD A RIGHT TO BE HEARD IN GEORGIA v. RACHEL, U.S. 384, n. 147, 780, IN A MANNER IN CONFLICT IN STATE AND FEDERAL COURTS.

Petitioner injured her hands while working her assinged job at Delco-Moraine, G.M.C. She had surgery in

July 1983. She filed a negligence complaint against the Respondent in the Montgomery County Common Pleas Court Booker v. Mobley, supra,. The state court changed the complaint from negligence to medical malpractice after it had been set-up for a jury trial. The state court dismissed the case for one (1) year statute of limitation, O.C.R. 2305.11. However, 2305.10 O.C.R. bodily injured or injury to person property when certain action arises , the statute of limitation for negligence is two (2) years, as in Wilson v. Garcia, 105 SCT 1938 85 Led (2d) 254 (1985). Also in Daugherty v. Doe, 14 App (3d) 258, 14 OBR 287, 470 NE (2d) 909 Hamilton 1984) negligence actions against a dentists were subject to two-year statute of limitations provided for a bodily injury action under O.R.C. 2305.10

However, if the case was a medical malpractice as in McMinn v. D. V. Ramani;, M.D. & Associates, 20 App (3d) 167, 20, O.B.R. 485, NE (2d) (Summit 1984), the statute of limitations for a cause of action in malpractice arising from the negligence performance of a psychiatric evaluations the caused accures when the report is released. In Smith v. Loeffler, 20 App (3d) 66, 20 OBR 70, 484 NE (2d) 185 (Summit 1984), a plaintiff with a cause of action for medical malpractice which arose before the effective date of O.R.C. 2305.11 but who discovered the injury only after the effective date must be allowed one year after the discovery in which to bring her claim. Whether the complaint was for negligence or medical malpractice, petitioner was within the time limit to file her complaint. Petitioner was injured in

May-June 1982, and had surgery in July, 1983. She filed a negligence complaint in August, 1983. She received her medical report from her surgeon in October 1983, which stated the injuries came from the job she was performing at work.

The state courts dismissed Petitioner complaint and denied her equal civil rights and due process of law when they refused to notify her of the second pre-trial conference. They denied her representation. Petitoner filed a complaint of discrimination in the United States District Court for the Southern District of Ohio Booker v. Mobley, supra, stating she was denied and could not enforce her equal civil rights in state courts as in Georgia v. Rachel, supra,. In 28 U.S.C. 1443 (1964ed) (1) & (2) states civil rights cases provides;

1. Against any person who is

denied or cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the U.S.A. or of all persons within the jurisdiction thereof.

2. For any act under color of authority derived from any law providing for equal rights or for refusing to do any act on the ground that it would be inconsistent with such law.

In Georgia v. Rachel, supra, Thomas Rachel and nineteen others filed a petition to transfer their case to the United States District Court for the Northern District of Georgia. In Mr. Justice Steward opinion of the court; he stated that this case presents

questions concerning the scope of a century-old federal law that permits a defendant in state court proceedings to transfer his case to a federal court under certain condition as in 28 U.S.C. 1443 (1964ed) in pertinent parts; a-gainst any person who is denied and cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the United States. Petitioner was denied Civil Action for Deprivation of Rights, 42 U.S.C. 1983, also the Four-teeneth Amendment with it's due process clause are sufficient examples that con-fer equal rights in the sense vital to our way of life of bestowing them upon all, New York v. Galamison, 342 f. 2d 255, 269, 271, also she was denied the First Amendment in parts; the freedom of speech or the right to petition the

Government for a redress of grievance; and the Seventh Amendment in part; a jury trial.

## CONCLUSION

We pray Certiorari should be granted to resolve the question left unanswered whether the complaint is a negligence which has a statute of limitation of two years or whether the complaint is a medical malpractice which has a statute of limitation of one year. Certiorari should be granted because Petitioner rights were violated. Georgia v. Rachel,supra,.

Respectfully submitted,
Beulah W. Booker
Petitioner

Joseph P. Buchanan
2580 Ketting Tower
Dayton, Ohio 45423
Counsel for Respondent

# APPENDIX

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

---

No. 85-3568

---

BEULAH W. BOOKER, Petitioner,

vs.

EVELYN MOBLEY, M.D., Respondent

(January 15, 1986)

BEFORE: Jones and Nelson, Circuit Judges; and Peck, Senior Circuit Judge

Plaintiff is appealing from a judgment dismissing her civil action for lack of subject matter jurisdiction. The appeal has been referred to a panel of the Court Pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon consideration of the record and briefs, this panel agrees unanimously that oral argument is

not needed. Rule 34(a), Federal Rules of Appellate Procedure. The record shows that plaintiff is an employee of Delco-Moraine Division, General Motors Corporation, at its plant located in Dayton, Ohio. Defendant is a physician and the plant medical director for said employer. The complaint alleges that plaintiff received injuries to her wrists and forarms as a result of her work and that defendant was negligent in treating her injuries. Plaintiff aslo claims that in a prior state action, the court dismissed her suit because she was black, thereby violating the Equal Protection Clause. The district court dismissed plaintiff's case sua sponte. Upon consideration, we agree with the district court's conclusion that it lacked jurisdiction to consider plaintiff's claims. Therefore, it is ORDERED that the judgment below be

affirmed for the reasons stated by the district court in its memorandum opinion of June 28, 1985. Rule 9(d)(2) Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT.

John P. Lehman, Clerk

# APPENDIX "B"

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

---

No. C-3-85-454

---

BEULAH BOOKER, Petitioner,

vs.

EVELYN MOBLEY, M.D., Respondent.

(June 2, 1985)

---

ENTRY DISMISSING PLAINTIFF'S COMPLAINT, SUA SPONTE, FOR WANT OF SUBJECT MATTER JURISDICTION; TERMINATION ENTRY

---

The filing of this case represents the second time that Plaintiff, Beulah Booker, has initated an action in this Court seeking damages from Defendant, Evelyn Mobley, M.D. for latter's alleged

medical malpractice. See Booker v. Mobley, Case no. C-3-83-1299 (S. D. Ohio). As with the earlier lawsuit, this Court sua sponte dismisses Plaintiff's complaint without prejudice for want of subject matter jurisdiction. Plaintiff's action in this Court have shadowed a medical malpractice action which Plaintiff has pursued against Defendant in state court ("state court proceedings"). See Booker Mobley, Case No. 83-2237 (Mont. Cty.). When Plaintiff becomes dissatisfied with the rulings made in the state court proceedings, she initates an action in this Court. The fatal flaw in Plaintiff's method of proceeding is that this Court is totally devoid of subject matter jurisdiction. Diversity does not exist between Plaintiff and Defendant; therefore, diversity cannot serve as a basis

for jurisdiction. See 28 U.S.C. #1332. also, for reasons that follwo, the Court concludes that it has neither "federal question" nor removal jurisdiction over this case. See 28 U.S.C. ##1331, 1441, 1443. Although Plaintiff has checked "Federal Question" as the basis of jurisdiction on her civil cover sheet, her complaint does not specifically state what federal question it raises. In other words, Plaintiff does not specifically state what federal law or constitutional provision her claim arises under. However, the Court concludes, from reading of the complaint, that the Plaintiff is asserting deprivations of her constitutional rights, namely equal protection of the laws, and the right to jury trial in civil cases guaranteed by the Seventh Amendment. This Court is firmly convinced that Plaintiff does

not, or could she, state a civil rights claim over which this Court has jurisdiction. It is apparent that the Plaintiff does not contend that the Defendant personally deprived her of equal protection or of any other civil right. The only claims that Plaintiff asserts against Defendant arise out of the medical treatment she received from the Defendant. On the other hand, Plaintiff's civil rights claims arise out of the conduct of the state court action. Plaintiff alleges that in the state court action she was deprived of equal protection and her Seventh Amendment right to a jury trial was violated. Thus, the Plaintiff is in effect "appealing" certain rulings made in the state court proceedings to this Court. Without question, this Court is without jurisdiction to review the decisions of state courts under the guise of

a civil rights action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Such review may be had only in the United States Supreme Court. 28 U.S.C. #1257. Furthermore, 28 U.S.C. #1443, which authorizes a defendant to remove an action from state court to federal court when that person "cannot enforce in (the state court) a right under any law providing for the equal civil rights of citizens of the United States," does not serve as a basis for jurisdiction over the present case because 1443 is limited by its own language to defendants. See Hull v. Jackson County Circuit Court, 138 F.2d 820 (6th Cir. 1943). The Plaintiff herein is the Plaintiff in the state court proceedings. Based upon the foregoing, the Court concludes that it is totally devoid of subject matter jurisdiction over the present

case, whether such jurisdiction is based on diversity of citizenship, a federal question or removal. Accordingly, the Court hereby dismisses the above captioned cause, sua sponte, for want of subject matter jurisdiction.[2] The captioned cause is hereby ordered terminated upon the docket records of the United States District Court, Southern District of Ohio, Western Division, at Dayton.

WALTER H. RICE

UNITED STATES DISTRICT JUDGE

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[2]This court is well aware the the Sixth Circuit has recently circumscribed the authority of the district court to enter sua sponte dismissals. See e.g. Morrison v. Tomano, 755 F.2d 515 (6th Cir. 1985); Tingler v. Marshall, 716 F.2d 1109 (6th Cir. 1983).

# APPENDIX "C"

COURT OF APPEALS OF

MONTGOMERY COUNTY, OHIO

---

No. 9074

---

BEULAH W. BOOKER, Petitioner,

vs.

EVELYN MOBLEY, M.D., Respondent

(April 3, 1985)

BROGAN, P. J.

Beulah W. Booker (appellant), acting both at trial and on appeal on her own behalf, brings this appeal seeking our review of the dismissal by the trial court of this action as being a medical malpractice claim as per R.C. 2305.11 (D) (3) which was not brought within the one year statute of limitations period set forth in R.C. 2305.11 (A). The facts which form the basis of this appeal follow:

On September 23, 1980, appellant suffered a job-related injury to her right hand. Surgery performed by a Dr. Jenkins on March 23, 1981. Dr. Jenkins allowed appellant to return to work under restricted work duties. Appellant was at all relevant times employed by General Motors at its Delco Moraine Division (Delco Moraine). On May 11, 1982, while working at a position known as "the divider plate job," appellant began to experience severe pain in her hands. Appellant went to see appellee, who is the Plant medical director at Delco Moraine, to explain the pain she was suffering and to request her assistance in obtaining reassignment to a different position. Her complaint further alleges: (sis) "...Plaintiff Doctors written statements to Dr. Mobley explaining she was being hurt severely and if she was

was not taken off that job, the severity of her condition would worsen and it did. Being a doctor, Dr. Mobley was fully aware of plaintiff pain, swelling, numbness and suffering because plaintiff doctors, Drs. Jenkins, Tytko and Martinez plus St. Elizabeth Emergency Center written reports that the plaintiff was being injured more with pain and suffering. Drs. Kutz, Brown and Reynolds and other doctors had explained in their findings that she was injured. The defendant, Dr. Mobley, refused to honor the plaintiff Doctor's statements and ordered her to continued during jobs that was making her hands hurt more with tenderness, soreness, numbness and pain. Being a Doctor, the defendant knew better and was told better..... Plaintiff states that as a direct proximate result of defendants negligence, plaintiff sustained personal injuries resulting in pain and

suffering, loss of income in excess amount of eleven thousand and eight hundred dollars. "Plaintiff states that as a direct and proximate result of defendants negligence, plaintiff has sustained a permanent injury to her left and right hand/wrist/forearm resulting in partial and permanent disabilities, past and future medical expenses..." For these injuries, appellant seeks one mission dollars in damages.

In her answer filed September 13, 1983, appellee denied all allegations to the complaint except the allegations that appellant was employed at Delco Moraine and that she suffered an injury on September 23, 1980. Appellee further set forth the following defenses: The complaint fails to state a claim upon which relief may be granted; the claims are barred by virtue of R.C. 4123.74 and 4123.74.1 (immunity under the workers' comp-

pensation laws); the claims are barred by the defense of laches; and appellant was contributorily negligent. On December 9, 1983, the trial court, sua sponte, determined the case "to be a medical malpractice claim as defined in O.C.R. 2305.11(D)111" The court referred the case to arbitration pursuant to R.C. 2711.21 and Local Rule 2.55. R.C. 2305.11(D)(3) defines "medical claim" as "any claim asserted in any civil action against a physician;;;arising out of the diagnosis, care, or treatment of any person."

On August 31, 1984, apellee filed a motion for summary judgment to Civ. R. 56 stating that appellant's claim is barred by R.C. 2305.11 (A), the one year statute of limitations for medical malpractice claims. In support, appellee states that appellant went on sick leave from work due to her hands following June 16, 1982;

that this is the latest date on which she discovered or should have discovered her condition; Oliver v. Kaiser Community Health Found. (1983) , 5 Ohio St. 3d 111, Syllabus; that, therefore, this is the latest date upon which it can be argued that her cause of action accrued; and therefore the filing date of appellant's complaint being more than one year thereafter, the action is barred. In the alternative, appellee requested a stay of proceedings until after the Industrial Commission of Ohio had ruled on appellant's workers' compensation claim. Finding that this action was not filed within the one year limitation of R.C. 2305.11 (A), the trial court dismissed this case on September 28, 1984. Throughout the pendency of the case, appellant argued her action was for negligence and not malpractice.

On October 9, 1984, appellant filed her notice of appeal. Appellant argues in her first assignment of error that the trial court erred in dismissing her case. The decisive issue is whether or not appellant's action is an action for malpractice as opposed to negligence. If so, then the court was correct in dismissing the case due to the statute of limitations found in R.C. 2305.11 (A). If not, then the court erred since the applicable statute of limitations would be R.C. 2305.10 allowing an action to be brought within two years of the accrual of the cause of action, and this case must be remanded for further proceedings. For the following reasons, we find that appellant's complaint does set forth a medical malpractice claim.

From what appears in her complaint and other pleadings, appellant sought

out appellee to have appellee in her role as plant medical director make a determination that appellant should not continue working at the divider plate job. Appellant presented appellee with her own doctors' reports and asked appellee to exercise her medical judgment in evaluating these reports to arrive at the same medical conclusion as they had. The complaint in essence states that due to a failure in appellee's medical judgment, she did not arrive at this conclusion and as a result, appellant was injured. This alleged failure to exercise good medical judgment by not supporting appellant's request to be taken off the divider plate job constitutes a "claim...against a physician...arising out of the diagnosis, care, or treatment of any person." As the complaint alleges a mis-diagnosis or failure to render proper care or treat-

ment (i.e. assisting in obtaining the reassignment of appellant to another position) it is a claim of medical malpractice under R.C. 2305.11 (D) (3). We find that appellant discovered or in the exercise of due diligence should have discovered her injury on or before June 16, 1982. Oliver, supra, but did not file her complaint until August 17, 1983. Thus the statute of limitations of R.C. 2305.11 (A) had run. Although we are of the opinion that the court could have rendered a judgment on the pleadings, it did not err in granting a motion for summary judgment. This assignment of error is therefore not well taken. For her second assignment of error, appellant states that the trial court erred in not giving appellant equal protection of the law. We do not find that the trial court in any way violated appellant's equal

protection rights. This assignment of error is therefore without merit.

Appellant cites as her third assignment of error, the trial court's refusal to give her a jury trial. In support of this assignment, appellant correctly argues that both feder and Ohio law provides for jury trials over civil disputes in certain circumstances. Her argument, however, overlooks the mandatory provisions of R.C. 2711.21 which provide in pertinent part:

"(A) Upon the filing of any medical claim as defined in division (D) (3) of section 2305.11 of the Revised Code, the controversy shall be submitted to an arbritration board..."

This is therfore unlike the situation argued by appellant where the parties upon agreement may submit themselves to arbritration. We therefore find that the court did not err when it origina-

lly referred this case to medical arbritration rather than directly to a jury trial. Further, any error would be of no avail as the action was properly dismissed for not having been brought within the statutory period. This assignment of error is overruled. Finally, appellant states the trial court erred "in not considering the Civil Rights Act of 1866." We find that the Civil Right Act of 1866 have no bearing on this case, therefore the trial court did not commit error by not considering them. Therefore this assignment of error is also without merit. The judgment of the trial court dismissing this action is affirmed.

.....

KERNS, J., and WILSON, J., concur.

# APPENDIX "D"

COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

---

No. 83-2237

---

BEULAH W. BOOKER, Petitioner,

vs.

EVELYN MOBLEY, M.D., Respondent.

(September 28, 1984)

ORDER

This cause came on to be heard on Defendant's Motion for Summary Judgment. The court finds that said Motion for Summary Judgment was served on Plaintiff, and by Entry filed herein on September 12, 1983, Defendant's Motion for Summary Judgment was set for hearing on September 28, 1984, at 9:30 a.m. The Court further finds that on September 24, 1984, Plaintiff filed a Motion for Extension seeking to postpone the hearing

on Defendant's Motion for Summary Judgment until the Industrial Commission renders a final order on Plaintiff's workers' compensation claim; that on September 26, 1984, Plaintiff filed a response to Defendant's Motion for Summary Judgment captioned "Plaintiff's Motion to Amend, Answer& Judgment"; that Plaintiff was served with a copy of the Entry setting this matter for hearing on September 28, 1984.

The Court finds that Plaintiff's Motion for Extension is not well taken and hereby overrules the same. The Court finds that Defendant's Motion for Summary Judgment is well taken for the reason that Plaintiff's claim against Defendant accured more than one (1) year prior to the filing of the Complaint herein and is barred by the Ohio Statute of Limitatione, Section 2305.11 O.R.C..

It is, therefore, ORDERED, that Defendant's Motion for Summary Judgment be, and the same is hereby sustained, and judgment is hereby rendered in favor of Defendant and against Plaintiff. Costs are taxed to Plaintiff

APPROVED:

John W. Kessler, Judge

Application for Review of the Decision of the Sixth Circuit Court of Appeals-For Want of Subject Matter Jurisdiction.

Sixth Circuit--Case No. 85-3568

Beulah W. Booker, Dayton, Ohio

Petitioner

Joseph P. Buchanan, Attorney

2580 Kettering Tower

Dayton, Ohio 45423

For Respondent

Supreme Court, U.S.
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CASE NO. 86-73

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1986

BEULAH W. BOOKER,
Petitioner

vs.

EVELYN MOBLEY, M.D.,
Respondent

On Writ Of Certiorari
To The United States Court of Appeals
For The Sixth Circuit

---

# BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

---

ROBERT B. CREW
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Dayton, Ohio 45423
513/223-6211

COWDEN, PFARRER, CREW & BECKER
and JOSEPH P. BUCHANAN of counsel;

Attorneys for Respondent
Evelyn Mobley, M.D.

## QUESTIONS PRESENTED FOR REVIEW

Whether or not an employee claiming that her employer's plant medical director negligently caused her to sustain severe injuries may maintain an action in federal court against said plant medical director because the state court in which she initiated the action considered her claim to be a medical malpractice action which was barred by the state statute of limitations.

PARTIES TO THE PROCEEDINGS
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Beulah W. Booker
Plaintiff-Appellant

— and —

Evelyn Mobley, M.D.
Defendant-Appellee

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I. There are no special or important reasons why the court should exercise its discretion and grant certiorari.
II. The district court was correct in finding it lacked subject matter jurisdiction.
III. Petitioner has not been deprived of a constitutional right.

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| Georgia v. Rachel 384 U.S. 780 (1966) | 4 |
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## CITATIONS TO THE OPINIONS AND JUDGMENTS DELIVERED IN THE COURTS BELOW

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(September 12, 1984) ..... See Appendix 3

## STATEMENT OF THE CASE

Plaintiff-Appellant Beulah W. Booker (Petitioner) filed a Complaint in Montgomery County Ohio Common Pleas Court on August 17, 1983, claiming that Evelyn Mobley, M.D., Plant Medical Director for Delco Moraine Division, General Motors Corporation (Respondent) had refused to honor Petitioner's medical restrictions and had ordered her to do jobs that were making her hands hurt; that as a result of Respondent's negligence, Petitioner sustained severe injuries.

The trial court, sua sponte, determined the case to be a medical malpractice claim as defined under Ohio law and referred the case to arbitration pursuant to the mandatory provisions of the Ohio law which requires medical malpractice claims to be submitted to an arbitration board. Respondent filed a Motion for Summary Judgment on the basis that the one-year statute of limitations for medical malpractice claims barred Petitioner's claim because Petitioner knew or should have known of her condition when she went on sick leave on June 16, 1982, more than one year prior to the filing of her Complaint. The trial court sustained Respondent's Motion for Summary Judgment and Petitioner appealed to the Court of Appeals for Montgomery County, Ohio. On April 3, 1985, the Court of Appeals rendered its decision affirming the trial court. Respondent filed a Motion for Reconsideration which was denied by the Court of Appeals on May 15, 1985.

On May 31, 1985, Respondent filed her Complaint in the United States District Court for the Southern District of Ohio, Western Division, at Dayton, Ohio. The factual allegations were similar to the allegations in the Complaint filed in state court. In addition, Respondent asserted that the state trial court had referred the case to arbitration as a medical malpractice action without her consent which was in violation of her rights under the 14th Amendment and the Civil Rights Act of 1866.

By Order of June 28, 1985, the United States District Court for the Southern District of Ohio dismissed Petitioner's

Compliant, sua sponte, for want of subject matter jurisdiction. Petitioner appealed this decision to the United States Court of Appeals for the Sixth Circuit which affirmed the decision of the trial court on January 15, 1986.

## ARGUMENT

I. THERE ARE NO SPECIAL OR IMPORTANT REASONS WHY THE COURT SHOULD EXERCISE ITS DISCRETION AND GRANT CERTIORARI.

Petitioner claims her hands and wrists were injured when her employer's plant medical director ignored her medical restrictions and ordered her to perform work she could not do without injury. Petitioner filed suit in state court. The trial court considered Petitioner's claim to be one of medical malpractice and dismissed her suit because it was barred by the Ohio statute of limitations. Petitioner appealed to the Montgomery County Court of Appeals in the State of Ohio which affirmed the trial court and denied Petitioner's application for reconsideration. Two weeks later, Petitioner filed suit in the United States District Court for the Southern District of Ohio, Western Division, at Dayton, Ohio.

None of the considerations governing review on certiorari enunciated in Supreme Court Rule 17 are present in this case. There is no conflict in the decisions of the United States Circuit Courts; no conflict with the decision of a state court; and no important question of federal law which should be settled by this Court.

II. THE DISTRICT COURT WAS CORRECT IN FINDING IT LACKED SUBJECT MATTER JURISDICTION.

The District Court found as follows:

> *" When Plaintiff becomes dissatisfied with the rulings made in the state court proceedings, she initiates an action in this Court. The fatal flaw in Plaintiff's method of proceeding is that this Court is totally devoid of subject matter jurisdiction."*
>
> *(Appendix B-2 Petition for Certiorari)*

The District Court concluded that the basis of jurisdiction must be diversity of citizenship, removal or a federal question. Since both Petitioner and Respondent were

both residents of Ohio, diversity did not exist between them and cannot serve as a basis for jurisdiction under 28 U.S.C. § 1332. 28 U.S.C. § 1443 authorizes a defendant to remove an action from state court to federal court and since Petitioner was the plaintiff in the state court proceedings, she cannot avail herself of the removal sections as a basis for federal court jurisdiction Hull v. Jackson County Circuit Court 138 F. 2d 820 (6th Cir. 1943). Petitioner's reliance on Georgia v. Rachel, 384 U.S. 780, 16 Led. 2d 925 (1966), where defendants removed a criminal trespass prosecution to federal court, is misplaced.

28 U.S.C. § 1331 grants the district courts original jurisdiction in civil actions arising under the Constitution laws, or treaties of the United States. The district court found that Petitioner did not contend that Respondent personally deprived her of equal protection or any other civil right; that the only claim against Respondent arose out of the medical treatment she received from the Respondent. The District Court found, and rightly so, that the Petitioner was attempting to "appeal" certain rulings made in the state court proceedings to federal court, and the district court was without jurisdiction to review the decision of state courts under the guise of a civil rights action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Accordingly, there was no basis for the District Court to assume subject matter jurisdiction in this action.

III. PETITIONER HAS NOT BEEN DEPRIVED OF A CONSTITUTIONAL RIGHT.

Petitioner asserts that the First, Seventh, Thirteenth and Fourteenth Amendments are the Constitutional provisions involved in this case. However, the allegations contained in Petitioner's Statement of the Case and Reasons Why The Writ Should Be Granted in her Petition for Certiorari fail to demonstrate any violation of a constitutional right, with one possible exception. Peti-

tioner claims that her action against Respondent was a negligence action with a two year statute of limitation and the state court erred in considering the action to be one for malpractice and applying the one-year statute of limitations. Furthermore, Petitioner argues that even if the one year statute of limitations applied, her Complaint in state court was timely filed because she filed her complaint within one year after she discovered her injuries. All of these issues were resolved by the state court adversely to Petitioner. None of these issues had anything to do with the deprivation of a constitutional right; the state court simply did not agree with Petitioner's version of the facts or her contentions of the applicable law.

Petitioner asserts that on December 9, 1983, a second pre-trial conference was held without notifying Petitioner (Page 7, Petition for Certiorari). Presumably this alleged failure to notify Petitioner of a pre-trial conference violated her constitutional right of due process of law. There is nothing in the order of the Montgomery County Common Pleas Court (Appendix D, Petition for Certiorari) or the decision of the Court of Appeals of Montgomery County (Appendix C, Petition for Certiorari) to support this bare allegation. Furthermore, there is nothing to suggest that the alleged second pre-trial conference adversely affected Plaintiff's prosecution of her claim. The critical motion to which Petitioner was entitled to notice and an opportunity to respond was Respondent's Motion for Summary Judgment that was filed August 31, 1984. By order dated September 12, 1984, the trial court notified Petitioner and Respondent that the motion for summary judgment would be heard September 28, 1984, (Appendix 3). Petitioner does not contend she never received the notice of hearing. On September 24, 1984, Petitioner filed a motion to postpone the hearing scheduled for September 28, 1984, and on September 26, 1984, filed a written response to Respondent's Motion for Summary Judgment. The trial court proceeded to

consider Respondent's Motion for Summary Judgment and Petitioner's written response, refused to postpone the hearing and entered judgment for Respondent. Clearly, Petitioner was given the opportunity to be heard and there was no violation of due process of law.

## CONCLUSION

Petitioner is a *pro-se* litigant. She claims that Respondent was responsible for her injuries at work.. When the state courts refused to grant her relief, she turned to the federal judiciary claiming violation of various constitutional provision. The record in this case affords no basis for concluding that Respondent violated any of Petitioner's constitutional rights. Petitioner has had ample opportunity to be heard and her petition for certiorari should be denied.

Respectfully submitted,

Robert B. Crew
Cowden, Pfarrer, Crew & Becker
2580 Kettering Tower
Dayton, Ohio 45423
(513) 223-6211
Attorney for Respondent
Evelyn Mobley, M.D.

## CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of August, 1986, three copies of the foregoing document were deposited in a United States mailbox, with first class postage pre-paid and served upon Beulah W. Booker, 643 Miami Chapel Road, Dayton, Ohio 45408, Petitioner pro se.

Robert B. Crew

# APPENDIX I

No. 85-3568

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BEULAH W. BOOKER, :
Plaintiff-Appellant :

vs. :

DR. EVELYN MOBLEY, M.D., :
Defendant-Appellee :

BEFORE: JONES and NELSON, Circuit Judges; and
PECK, Senior Circuit Judge

Plaintiff is appealing from a judgment dismissing her civil action for lack of subject matter jurisdiction. The appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon consideration of the record and briefs, this panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

The record shows that plaintiff is an employee of Delco-Moraine Division, General Motors Corporation, at its plant located in Dayton, Ohio. Defendant is a physician and the plant medical director for said employer. The complaint alleges that plaintiff received injuries to her wrists and forearms as a result of her work and that defendant was negligent in treating her injuries. Plaintiff also claims that in a prior state action, the court dismissed her suit because she was black, thereby violating the Equal Protection Clause. The district court dismissed plaintiff's case sua sponte.

Upon consideration, we agree with the district court's conclusion that it lacked jurisdication to consider plaintiff's claims.

Therefore, it is ORDERED that the judgment below be affirmed for the reasons stated by the district court in its memorandum opinion of June 28, 1985. Rule 9(d)(2), Rules of the Sixth Circuit. Entered by order of the Court:

John P. Hehman, Clerk

January 15, 1986

# APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

| | | |
|---|---|---|
| BEULAH BOOKER,<br>Plaintiff | | |
| vs. | June 28, 1985 | Case No.<br>C-3-85-454 |
| EVELYN MOBLEY, M.D.,<br>Defendant | | |

---

ENTRY DISMISSING PLAINTIFF'S COMPLAINT, *SUA SPONTE*, FOR WANT OF SUBJECT MATTER JURISDICTION: TERMINATION ENTRY

---

The filing of this case represents the second time that Plaintiff, Beulah Booker, has initiated an action in this Court seeking damages from Defendant Evelyn Mobley, M.D., for the latter's alleged medical malpractice. See Booker v. Mobley, Case No. C-3-83-1299 (S.D. Ohio). As with the earlier lawsuit, this Court sua sponte dismiss Plaintiff's complaint without prejudice for want of subject matter jurisdiction.

Plaintiff's actions in this Court have shadowed a medical malpractice action which Plaintiff has pursued against Defendant in state court ("state court proceedings"). See Booker v. Mobley, Case No. 83-2237 (Mont. Cty.). When Plaintiff becomes dissatisfied with the rulings made in the state court proceedings, she initiates an action in this Court. The fatal flaw in Plaintiff's method of proceeding is that this Court is totally devoid of subject matter jurisdiction. Diversity does not exist between Plaintiff and Defendant; therefore, diversity cannot serve as a basis for jurisdiction. See 28 U.S.C. § 1332. Also, for reasons that follow, the Court concludes that it has neither "federal question" nor removal jurisdiction over this case. See 28 U.S.C. §§1331, 1441, 1443.

Although Plaintiff has checked "Federal Question" as the basis of jurisdiction on her civil cover sheet, her complaint does not specifically state what federal question it raises.

In other words, Plaintiff does not specifically state what federal law or constitutional provision her claim arises under. However, the Court concludes, from the reading of the complaint, that the Plaintiff is asserting deprivations of her constitutional rights, namely equal protection of the laws, and the right to jury trial in civil cases guaranteed by the Seventh Amendment. This Court is firmly convinced that Plaintiff does not, nor could she, state a civil rights claim over which this Court has jurisdiction. It is apparent that the Plaintiff does not contend that the Defendant personally deprived her of equal protection or of any other civil right. The only claims that Plaintiff asserts against Defendant arise out of the medical treatment she received from the defendant. On the other hand, Plaintiff's civil rights claims arise out of the conduct of the state court action. Plaintiff alleges that in the state court action she was deprived of equal protection and her Seventh Amendment right to a jury trial was violated.[1] Thus, the Plaintiff is in effect "appealing" certain rulings made in the state court proceedings to this Court. Without question, this Court is without jurisdiction to review the decisions of state courts under the guise of a civil rights action. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). Such review may be had only in the United States Supreme Court. 28 U.S.C. §1257.

Furthermore, 28 U.S.C. §1443, which authorizes a defendant to remove an action from state court to federal court when that person "cannot enforce in [the state court] a right under any law providing for the equal civil rights of citizens of the United States," does not serve as a basis for jurisdiction over the present case because §1443 is limited by its own language to defendants. See Hull v. Jackson County Circuit

[1] Parenthetically, the Court notes that the Seventh Amendment does not apply to states. See, e.g., Letendre v. Fugate, 701 F.2d 1093 (4th Cir. 1983); Olesen v. Trust Co. of Chicago, 245 F.2d 522 (7th Cir.), cert. denied, 355 U.S. 896 (1957). Thus, even assuming arguendo that Plaintiff was denied a jury trial in state court, this denial could not have deprived Plaintiff of a right guaranteed by the Seventh Amendment.

Court, 138 F.2d 820 (6th Cir. 1943). The Plaintiff herein is the plaintiff in the state court proceedings.

Based upon the foregoing, the Court concludes that it is totally devoid of subject matter jurisdiction over the present case, whether such jurisdiction is based on diversity of citizenship, a federal question or removal. Accordingly, the Court hereby dismisses the above captioned cause, sua sponte, for want of subject matter jurisdiction.[2]

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court, Southern District of Ohio, Western Division, at Dayton.

Walter H. Rice
United States District Judge

Copies mailed to:

Beulah W. Booker
643 Miami Chapel Road
Dayton, Ohio 45408
(Pro Se Plaintiff)

Joseph P. Buchanan
Attorney at Law
2580 Kettering Tower
Dayton, Ohio 45423
(Counsel for Defendant)

[2] This Court is well aware that the Sixth Circuit has recently circumscribed the authority of the district courts to enter sua sponte dismissals. See, e.g., Morrison v. Tomano, 755 F.2d 515 (6th Cir. 1985); Tingler v. Marshall, 716 F.2d 1109 (6th Cir. 1983). However, Tingler and Morrison do not purport to limit the authority of a district court to enter a sua sponte dismissal when, as here, there is a patent absence of subject matter jurisdiction.

# APPENDIX 3

IN THE COMMON PLEAS COURT
OF MONTGOMERY COUNTY, OHIO

| | | |
|---|---|---|
| BEULAH BOOKER, | : | |
| Plaintiff | : | Case No. 83-2237 |
| vs. | : | (Judge John W. Kessler) |
| DR. EVELYN MOBLEY, M.D., | : | |
| Defendant | : | |
| | : : : : : | ENTRY |

This matter is hereby set for hearing on the 28th day of September, 1984, at 9:30 a.m., in Courtroom No. 9, on Defendant's Motion for Summary Judgment.

APPROVED:

JOHN W. KESSLER, JUDGE

September 12, 1984

Copies of this Entry were forwarded to all parties listed below by ordinary mail this filing date.

Beulah W. Booker, Plaintiff, 643 Miami Chapel Road, Dayton, Ohio 45408

Joseph P. Buchanan, Attorney for Defendant, 2580 Kettering Tower, Dayton, Ohio 45423

Gregg Findlay, Bailiff

Filed 84, September 12 P3:23

Supreme Court, U.S.
FILED
SEP 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. 86-73

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

BEULAH W. BOOKER,
Petitioner

vs.

EVELYN MOBLEY, M.D.
Respondent

---

ON PETITION FOR APPEAL TO THE
UNITED STATES SIXTH CIRCUIT

---

# REPLY BRIEF TO PETITION FOR CERTIORARI

---

BEULAH W. BOOKER

643 MIAMI CHAPEL RD.

DAYTON, OHIO 45408

(513) 228-2550

## QUESTION PRESENTED

Whether or not a bailiff is allowed to hold court in the Judge's absent; whether the Constitution permits state court officials and the defendant to hold conference without notifying plaintiff; whether the first amendment allows on to petition the government for redress when one's rights have been violated in state court; whether the statute of limitation for medical malpractice is one year or one year after you receive the report.

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## STATEMENT OF THE CASE

In May-June 1982, Petitioner was injured at her place of employment, Delco Moraine, G.M.C., where the Respondent is it's Plant Medical Director, who refused to have Petitioner removed from a job that caused her severe injuries.

On July 23, 1983, Petitioner had surgery on her right hand. On August 17, 1983, Petitioner filed a negligence complaint in the Montgomery County Common Pleas Court, Ohio. On October 4, 1983, Petitioner received a copy of the report from her physician concerning her injuries. On November 14, 1983, a pre-trial conference were held in Judge's chambers by his Bailiff. Dates were set-up for a jury trial for March 12, 1984. On December 4, 1983, a second pre-trial conference was held without notifying Petitioner. The negligence complaint was changed to medical malpractice with an arbritrator,

the previous jury trial dates was vacated by Judge John Kessler, who on September 28, 1984 dismissed the case by the defendant summary judgment, one year statute of limitations. In each of Judge Kessler orders or dismissal they was not signed, they did not bear the signature of a judge.

On May 3, 1985, Petitioner filed a complaint in the United States District Court for the Southern District of Ohio Western Division, Denied Equal Protection of the Law in State Courts, stating she was denied and could not enforce her equal rights in state courts citing 42 U.S.C. 1981 and 42 U.S.C. 1983, and 28 U.S.C. 1443 (1964ed) (1). By order of June 28, 1985, the District Court dismissed the complaint, sua sponte,for want of subject matter jurisdiction. Petitioner appealed this decision to the United States Court of Appeals for the Sixth

Circuit which affirmed the decision of the trial court on January 15, 1986.

## ARGUMENT

I. THERE ARE SEVERAL IMPORTANT REASONS WHY THE COURT SHOULD EXERCISE IT'S DISCRETION AND GRANT CERTIORARI.

Petitioner injured her hands and wrists at her place of employment, Delco Moraine, G.M.C. where the Respondent is it's Plaint Medical Director who ignored the injuries. Petitioner filed a negligence complaint in state court. A pretrial conference were held on November 14, 1983, (Appendix A-1), by the Judge Bailiff on orders from the Judge, John Kessler. At this conference a jury trial date was set and agreeded upon by both parties for March 12, 1984,no motion or issues were made by the Respondent to

the fact of a medical malpractice, but a motion made by Petitioner was denied by the bailiff. The Respondent should have objected to the Bailiff holding court out-of-his-profession. According to Webster's Dictionary, a bailiff is a court officer who executes writs, processes, etc and acts as a messenger or usher in court; a judge is a civil officer invested with power to hear and determine causes, Civil and Criminal and to administer justice between parties in courts. At the conference, the Bailiff was performing a job he was not qualified to do, which had so far departed from the accepted and usual course of judicial proceedings.

On December 9, 1983, a second pretrial conference was held between the Respondent and the Judge, John Kessler, where the Petitioner was not notified.

At this conference the complaint was changed from negligence to medical malpractice. Dates that were previously set by the bailiff was vacated by the judge, (Appendix B-1 ), who was aware that the bailiff was powerless to hold court in his stead, therefore, certiorari should be granted because they departed from the accepted and usual course of judicial proceedings.

Another reason certiorari should be granted, petitioner complaint should have remained a negligence charge. According to Ballantine Law Dictionary, negligence is the failure to perform an established duty which proximately causes injury to the plaintiff, Northern Indiana Transit v. Buck, 228 Ind. 162, 89 NE2d 905, 17 ALR2d 572, also, the failure to exercise the degree of care demanded by the circumstances.

Malpractice by physician or surgeon is, the wrong for which a physician or surgeon is answerable to his patient where it results in injury to the patient. The Respondent was not Petitioner physician she did not diagnosis or treat petitioner, but refused to remove her from a job after being told of the severity it would cause by six (6) doctors. Respondent denied Petitioner her rights by not pulling her off that job, she treated her as a slave. Certiorari should be granted because the statute of limitations for negligence is two (2) years O.C.R. 2305.11, and the statute of limitations for medical malpractice is one year after the discovery, 2305.11 in which to bring a claim. The record will show the court dismissed the case after the bailiff held court.

II. PETITIONER COMPLAINT OF DISCRIMINATION WERE IN THE RIGHT JURISDICTION.

Petitioner were denied equal rights and deprivation of rights, 42 U. S.C. 1981 and 1983, when the state court had the second pre-trial conference without notifing her. They denied her representation and due process and equal protection of the laws. She filed her complaint in the district court because she was denied and could not enforce her equal civil rights in state courts, Georgia v. Rachel, U.S. 384 n. 147, 780; 28 U.S.C. 1443 (1964ed) (1) and (2) in parts; civil right cases provides "against any person who is denied or cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the United States!" "for any act under color of authority derived from any law providing for equal rights." Petitioner has a right to sue and enforce contracts, and to the full and equal benefits of all laws which is

guaranteed by the Constitution of the United States.

In the Respondent (brief of opposition p-4), he states,"the district court found that petitioner did not contend that respondent personally deprived her of equal protection or any other civil right; that the only claim against respondent arose out of the medical treatment she received from the respondent." Petitioner contends that the respondent denied her a right to enforce the contract between U.A.W. and G.M.C., according to paragraph 72 in parts, "any person who has been incapacitated at his regular work by injury or compensable occupational disease while employed by the corporation, will be employed in other work on a job that is operating in the plant which he can do." The respondent did not treat petitioner as her patient but refused to do what an ordinary purdent person would

do, remove petitioner from the job which caused her severe injuries.

III. PETITIONER WERE DEPRIVED OF HER CONSTITUTIONAL RIGHTS.

In the respondent (brief of opposition, p-5), he stated, "presumably this alleged failure to notify Petitioner of a pre-trial conference violated her Constitutional right of due process of law." In Petitioner (Appendix A,p-1) it will show a pre-trial conference was schedule for November 14, 1983, (Appendix B) will indicate where a second pre-trial conference was held and the changingof the complaint and vacating of all previous dates. Petitioner was deprived of the First Amendment, petition the government for redress of grievance in Federal Court; the Seventh Amendment, trial by jury; the Fourteenth Amendment, due process of law and equal protection of the laws within its jurisdiction and the Thir-

teenth Amendment, neither slavery nor involuntary servitude shall exist in the United States. When Respondent refused to removed Petitioner from the job that caused her severe injuries, she treated her like a slave and violated the thirteenth amendment.

The lower court and respondent changed the complaint to medical malpractice and pick an arbritrator (John Cummings) without petitioner present or agreement which violated her Constitutional rights and deprived her of due process and equal protection of the laws. In Flagg Brothers v. Brooks, 436 U.S. 149, 155 (1978) when a private individual or entity who conspires with state officials to deprive a citizen of his constitutional rights may be held accountable under 42 U.S.C. Section 1983, Martin Marietta Corp. v. Bendix Corp., 690 f.2d 558 (6th cir-1982).

In respondent (Brief of Opposition p-5) he stated, "On September 24, 1984, petitioner filed a motion to postpone the hearing schedule for September 28, 1984." The record will show that on August 31, 1984, respondent also requested a motion for a stay. Petitioner was denied a stay, however, the respondent was granted summary judgment. Petitioner was denied due process and equal protection of the laws.

## CONCLUSION

Petitioner is a U.S. citizen, employed by Delco Moraine, G.M.C. where the respondent is it's plant medical director who with knowledge refused to have petitioner removed from a job that severly injured her. Petitioner asserted action in state court where they used a bailiff to perform at a pre-trial conference. Later, the Judge and respondent had a second pre-

trial conference without notifying petitioner. They changed the complaint from negligence to medical malpractice and vacated the previous dates set by the bailiff. Petitioner was denied due process and equal protection of the laws. She filed a complaint of discrimination in the district court petitioning the government for redress and equal protection of the laws. The record will show petitioner was injured due to respondent negligence, who denied petitioner the rights to enforce the contract. Petitioner was denied the right to a jury trial and a right to be represented at the second pre-trial conference, therefore, certtiorari should be granted.

Respectfully submitted,

Beulah W. Booker
Petitioner

# APPENDIX

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

---

NO. 83-2237

---

BEULAH W. BOOKER, Petitioner,

vs.

DR. EVELYN MOBLEY, M.D., Respondent

(October 26, 1983)

ENTRY SETTING PRETRIAL

November 14, 1983, at

8:45 A.M. (In Chambers)

This matter is hereby set for a pretrial conference, in chambers, on the 14th day of November, 1983, at 8:45 A.M.

APPROVED:

John W. Kessler, Judge

# APPENDIX-B

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

---

NO. 83-2237

---

BEULAH W. BOOKER, Plaintiff,

vs.

DR. EVELYN MOBLEY, M.D.,Respondent

(December 9, 1983)

ORDER OF REFERRAL TO MEDICAL MALPRACTICE ARBRITRATION

This case is determined to be a medical malpractice claim as defined in O.R.C. (D), and is therefore referred according to the applicable statutes and local rules to John Cumming, the chief arbitrator appointed by this Court.

Dates previously set for discovery, motions, joint pretrial statement, final pretrial conference, and trial are hereby VACATED.

SO ORDERED:

_____

JOHN W. KESSLER, JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the_____ day of September, 1986, three copies of the foregoing document were deposited in a U.S.A. mailbox, with first class postage pre-paid and served upon Robert B. Crew, 2580 Kettering Tower, Dayton, Ohio 45427, Attorney for Respondent, Evelyn Mobley, M. D.

Respectfully submitted,

Beulah W. Booker
643 Miami Chapel Rd.
Dayton, Ohio 45408
(513) 228-2550